IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

Writ Petition Nos.23560 and 28662 of 2006 and

MP No.1+1/06

Dr.R.Lakshmi .. Petitioner in both the W.Ps.

Vs.

1. State of Tamil Nadu,
   rep. by Secretary to Government,
   Health & Family Welfare Department,
   Fort St.George,
   Chennai-600 009.

2. Director of Medical Education,
   Chepauk, Chennai-600 005.

3. S.Manoranjitham

4. P.Sarojini

5. The President,
   Indian Nursing Council,
   Combined Council Building,
   Kotla Road, Temple Lane,
   New Delhi-110 002. .. Respondents in W.P. No.23560 of 2006

1. State of Tamil Nadu,
   rep. by Secretary to Government,
   Health & Family Welfare Department,
   Fort St.George,
   Chennai-600 009.

2. Director of Medical Education,
   Chepauk, Chennai-600 005.

3. The Dean,
   Madras Medical College,
   Chennai-3. .. Respondents in W.P. No.28662 of 2006

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W.P.No.23560 of 2006:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 and 2 to consider and promote only such of those Lecturers to the post of Readers in the College of Nursing with the qualification prescribed by the Indian Nursing Council, as published in the Regulation for establishing College of Nursing (B.Sc. Nursing) in letter dated 6.12.2005.

W.P.No.28662 of 2006:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the proceedings of the third respondent made in Ref.No.11714/E1/4/06 dated 22.8.2006 and quash the same.

For petitioner : Mr.A.Muthukumaraswamy,
Sr.Counsel for Mr.A.Jenasenan

For respondents in W.P.No.23560 of 2006 : Mr.M.Sekar, Spl.GP(Edn.) for R1 & R2
M/s.A.V.Bharathi for R3
M/s.R.Muthukkannu for R4
Mr.M.T.Arunan, ACGSC for R5

For respondents in W.P.No.28662 of 2006 : Mr.M.Sekar, Spl.GP(Edn.)

COMMON ORDER

These two writ petitions have been filed by the same writ petitioner, one for a direction against the first and second respondents in W.P.No.23560 of 2006, namely, Government of Tamil Nadu and Director of Medical Education, to consider and promote only such of those Lecturers to the post of Readers in the College of Nursing, having qualifications prescribed by the Indian Nursing Council published in the Regulation for establishing College of Nursing (B.Sc. Nursing) dated 06.12.2005, and the other for a direction to quash the order of the third respondent in W.P.No.28662 of 2006, the Dean of Madras Medical College dated 22.08.2006, by which the Dean of Madras Medical College has transferred the petitioner from the post of Lecturer in the College of Nursing, Madras Medical College, Chennai-3 to the College of Nursing, Madurai Medical College, Madurai, relieving her from her duties in the afternoon of 23rd August 2006.

2. The petitioner has acquired Diploma in Nursing and entered into the Government Service as a Nurse on 09.03.1981 and worked in Government Tambaram Hospital, Tambaram till the year 1986. As a service candidate, she has undergone B.Sc. Course in Nursing in the Madras Medical College and was awarded degree in the year 1989 and thereafter, she was posted as a Nurse in the Government General Hospital, Chennai. On permission, she

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has undergone the Post Graduate Degree in Nursing in Christian Medical College, Vellore and acquired the M.Sc. Degree in Nursing and she was posted at Government General Hospital in Chennai. She has registered her Ph.D. in Nursing and was also awarded the Ph.D. Degree in Nursing in June 2005.

3. The Government framed Adhoc Rules prescribing qualifications for various posts in the College of Nursing, like that of Readers and Lecturers and the said Rules were framed in accordance with the Regulations framed by Indian Nursing Council. The post of Lecturer in Nursing was to be filled up by a person possessing a Master Degree in Nursing with three years experience after M.Sc. Nursing. The Government issued G.O.Ms.No.192, Health and Family Welfare Department, dated 16.06.2000 amending the Adhoc Rules by which, for the post of Lecturer, the post of Nurse was included as a feeder category, by deleting the requirement of teaching experience. Eventhough in the year 2000-01, the respondents have drawn a panel for promotion to the post of Lecturers and the petitioner's name was included, she was not promoted. However, certain persons who were not qualified as per the Regulations prescribed by the Indian Nursing Council were included in the panel and the petitioner has in fact, made a representation and ultimately in the year 2004, the respondents have issued an order directing to include the name of the petitioner in the panel of the year 2001-2002 and promoted her. The next avenue of promotion is that of Reader for which the qualification prescribed as per the Regulation of the Indian Nursing Council prior to December 2005 was that, the candidate must have a Master Degree in Nursing with teaching experience after M.Sc. in Nursing and the Adhoc Rules framed by the State Government also provided for the same, namely, the Master Degree in Nursing with five years experience, out of which three years should be in teaching side. However, in the year 2005, Nursing Council of India has issued Amended Regulations prescribing qualifications for the post of Readers, stating that, apart from the Master Degree in Nursing, the candidate should have ten years experience after M.Sc. Nursing in a College of Nursing. It also states that if suitable candidates were not available with such experience, five years of experience in a College of Nursing with ten years of teaching experience can be taken into consideration and also provided that a person who has independently published work or a person with a Doctorate Degree or M.Phil would be desirable. However, consequent to the amendment made by the Indian Nursing Council, the State Government has not effected the amendment with a result, as per the Adhoc Rules framed by the State Government, which was based on the original Regulations of the Indian Nursing Council, it was only M.Sc. Degree in Nursing with five years experience in Nursing, out of which three years is a teaching experience as a Lecturer in Nursing. It was based on the said inconsistent Regulations of the State and the Indian Nursing Council, the respondents were trying to make appointment and it was under those circumstances, the petitioner was constrained to file W.P.No.23560 of 2006 for a direction as stated above and there was an order of interim injunction granted in the said writ petition on 26.07.2006, and the said order copy was made ready on 31.07.2006 and was

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received on 01.08.2006 and the same was communicated to the respondents on 02.08.2006. The interim order granted was subsequently extended by another three weeks on 10.08.2006. The respondents have not mentioned at that time about any promotion made. However, the petitioner came to know on 18.08.2006 that the Government has issued promotion on 31.07.2006, promoting the third respondent in W.P.No.23560 of 2006, Mrs.S.Manoranjitham on 18.08.2006. According to the petitioner, the said third respondent Mrs.S.Manoranjitham was promoted as Reader and was not having the required qualification prescribed by the Indian Nursing Council and such promotion was made when the order of injunction was in vogue. It was under those circumstances, the petitioner has issued a notice through her counsel on 21.08.2006 bringing out the said fact and also stating that it amounts to contempt. It was immediately thereafter on 22.08.2006, the impugned order in W.P.No.28662 of 2006 came to be passed transferring the petitioner from Madras Medical College to College of Nursing, Madurai Medical College. The first and second respondents in W.P.No.23560 of 2006 who are also the first and second respondents in W.P.No.28662 of 2006, along with the Dean, Madras Medical College have filed counter affidavit.

4. It is the case of the first and second respondents that the petitioner, after completing her M.Sc. in Nursing was deputed to assist the nursing students in teaching, making it clear that it will not make her eligible to claim any right over others who were seniors to her and the deputation was only a stop-gap arrangement. According to the respondents, the Government issued G.O.Ms.No.192, Health and Family Welfare Department, dated 16.06.2000 amending the Adhoc Rules in respect of the post of Lecturers in Nursing, stating that the said post can be transferred from the post of Nursing Superintendent Grade-I, etc. or by promotion from the post of Nursing Superintendent Grade-II in Category-2, etc. or by recruitment by transfer from the category of Public Health Nurse in the Tamil Nadu Public Health Service or by direct recruitment. It is also their case that by the subsequent G.O.Ms.No.89, Health and Family Welfare Department, dated 21.05.2002, the qualification for the post of Lecturer was made stating that the candidates should have a Master Degree in Nursing in the speciality concerned or its equivalent, recognised by the Indian Nursing Council and teaching experience for a period not less than three years in Nursing and also stating that unless such person has registered as a Nurse and as a Midwife in the case of female, he or she will not be eligible. It is also stated in the counter affidavit that due to administrative contingency, the Rules were relaxed, in order to enable the persons with lesser years of teaching experience to fill up the teaching post in the interest of the students. According to the respondents, when the third and fourth respondents in W.P.No.23560 of 2006, namely, Mrs.S.Manoranjitham and Mrs.P.Sarojini, were promoted, the petitioner was only a Selection Grade Nurse and deputed temporarily to the College of Nursing. According to the respondents, for the post of Reader in Nursing, the qualification is M.Sc. Nursing in the speciality concerned with five years teaching experience in Nursing, out of which three years should be of teaching for University Nursing students. It is also the specific case of the first and second respondents that it is not mandatory

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to make amendment to the Rules framed by the Government prescribing qualification as and when Indian Nursing Council modifies its regulations. It is also stated that the appointments are made in accordance with Rules prescribed by the State Government and not based on the qualifications prescribed by the Indian Nursing Council. It is also the case of the respondents that for the year 2004-2005, the crucial date for preparation of panel was 15.03.2004. As per the qualifications prescribed for the post of Reader, the third respondent in W.P.No.23560 of 2006, Mrs.S.Manoranjitham was promoted as Reader in Nursing in the Medical and Surgical speciality as per G.O.(D) No.713, Health and Family Welfare Department, dt.31.07.2006 by including her name in the panel of 2004-2005 and she has also taken charge as Reader on 31.07.2006. According to the first and second respondents, the promotion of the said third respondent, Mrs.S.Manoranjitham was in accordance with the existing Adhoc Rules of the State Government as on the crucial date, namely, 15.03.2004. The petitioner who was only deputed for teaching was promoted on regular basis as Lecturer as per G.O.(D) No.927, Health and Family Welfare (AA2) Department, dated 03.09.2004 and her name will be considered for promotion as a Reader in Nursing when her turn comes up. It is also the case of the respondents 1 and 2 that simply because the petitioner is having higher qualification above the third respondent, who is having the prescribed qualifications, she cannot claim preference over her senior. It is also the specific case of the first and second respondents that the third respondent's promotion was made taking into consideration her qualification as on the crucial date, namely, 15.03.2004 and she has joined duty on 31.07.2006. It is also the case of the respondents especially, the Dean of Madras Medical College that the transfer effected to the petitioner under the impugned order dated 22.08.2006 has nothing to do with the writ petition filed by her in respect of the promotion given to the third respondent as a Reader in Nursing and the transfer was effected purely on administrative grounds. It is also stated that the reason for transfer is that the Government has intended to start a Post Graduate Course in Nursing in Madurai Medical College with an intake of 100 students. It was due to that reason, the transfer has been effected and it is also reiterated that it is not mandatory to the Government to adhere to the Regulations framed by the Indian Nursing Council while framing Adhoc Rules. The respondents have also given particulars about the number of Readers and Lecturers working in the College of Nursing at Chennai and Madurai. The third and fourth respondents have also filed counter affidavits in the line of the counter affidavit filed by the first and second respondents.

5. The fifth respondent in W.P.No.23560 of 2006, namely, the Indian Nursing Council has filed a counter affidavit. It is the case of the fifth respondent, Indian Nursing Council that as per the Indian Nursing Council Act, 1947, it has two functions, namely, regulating the nursing profession in the whole of the country and setting uniform standards in the matter of nursing education. It was based on that, the minimum standards have been prescribed to be followed by all Nursing Institutions in India. The Regulations have been framed accordingly on 11.07.2005 and

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06.12.2005 and every Nursing Institution is expected to scrupulously follow the Regulations and any deviation will be dealt with under the Indian Nursing Act, 1947. It is also the case of the fifth respondent that unless a Nursing Institution located anywhere in India is recognised by the Indian Nursing Council, any Degree or Diploma obtained from such Nursing Institution will not entitle such persons to register themselves in the State Nursing Councils and cannot practice in any part of India outside the State.

6. By way of reply, the petitioner, while reiterating the stand taken in the affidavit filed in support of the writ petition, would submit that the transfer in respect of the petitioner is vindictive, and it was passed only after filing of the earlier writ petition and order was granted by this Court. That apart, it is the case of the petitioner that two other persons were transferred and that was not given effect to, while the petitioner was sought to be relieved immediately. It is also stated that it is not as if the petitioner alone was working in Chennai from the year 1981, and there are also many other persons like that of Mrs.Susila Kumari and Selvi Janette Fernandez, who have been working since the date of their original appointment. It is also the case of the petitioner that only Under Graduate Programmes are started in Madurai while in Madras Medical College, there are both Post Graduate as well as Under Graduate courses. At Madurai, when there are only Under Graduate courses, the petitioner who is on the surgical side along with Mrs.Prasanna Baby has been transferred, which is absolutely not required. Therefore according to the petitioner, the transfer is vindictive in nature.

7. Mr.A.Muthukumaraswamy, learned Senior Counsel appearing for the petitioner, submitted that originally when the Adhoc Rules were framed, it was in accordance with the Regulations framed by the Indian Nursing Council, but in the year 2005, the Indian Nursing Council has made amendment to the Regulations in respect of imposing qualifications for the post of Reader in Nursing requiring Master Degree in Nursing with ten years experience after M.Sc., and stating that if such a candidate is not available, then there shall be a candidate with five years of experience in a College of Nursing with an aggregate of ten years teaching experience, with a desirability of having a Doctorate Degree. Such amendment has not been carried out in the Adhoc Rules framed by the State Government and therefore, there is an inconsistency between the Adhoc Rules framed by the State Government and the Regulation of the Indian Nursing Council which was amended in the year 2005.

8. Learned Senior Counsel has taken me to the Regulations for establishment of a College of Nursing issued by the Indian Nursing Council dated 06.12.2005. According to the said Regulations, the qualification required for the post of Reader / Associate Professor in Nursing is as follows:

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"Reader / Associate Professor - Master Degree in Nursing

- 10 years experience after M.Sc. Nursing in a College of Nursing. (If a candidate is not available, 5 years of experience in College of Nursing with an aggregates of 10 years teaching experience.

Desirable: Independent published work of high standard / doctorate degree / M.Phil."

By referring to the counter affidavit filed by the fifth respondent, the learned Senior Counsel for the petitioner, would submit that the Regulations of the Indian Nursing Council is mandatory and the same has to be followed. Therefore, according to the learned Senior Counsel, the stand taken by the first and second respondents, namely the State Government, as if any amendment made by the Indian Nursing Council need not be consequently amended in the State Adhoc Rules, is not tenable. He would also submit placing reliance on the judgments of the Hon'ble Apex Court reported in (1996) 3 SCC 15 in the case of Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust Vs. State of Tamil Nadu and Others and JT 2006 (4) SC 201, in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Others, apart from the judgment of the Apex Court reported in (2000) 5 SCC 231 in the case of Jaya Gokul Educational Trust Vs. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and another, to substantiate his contention that the State cannot have a policy contrary to a Central Act, by referring to List I, Entry 66 and List III, Entry 25 of the Seventh Schedule of the Constitution of India. Therefore, according to the learned Senior Counsel, without amending the Adhoc Rules by the State Government after the amendment of the Regulations by the Indian Nursing Council is untenable, and the selection process effected would become invalid. He would also submit that the petitioner is the only Ph.D. candidate available with prescribed degree in M.Sc. Nursing having sufficient experience, and especially when both the Post Graduate and Under Graduate Courses are available in the the College of Nursing of the Madras Medical College and only one Under Graduate Course available at the Madurai Medical College at Madurai for which already there are three teachers available, the transfer of the petitioner was effected only in a vindictive manner, especially when this Court has already granted an order of injunction and when the injunction order was in existence, the promotion has been given to the third respondent on 31.07.2006.

9. On the other hand, Mr.M.Sekar, learned Spl. Govt. Pleader (Education) appearing for the first and second respondents and also the Dean of the Madras Medical College, submitted that till the year 2005, there was no Regulation by the Indian Nursing Council and it is also his

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submission that even if the Indian Nursing Council's Regulation is applied, which requires ten years of teaching experience, the petitioner will be totally out of purview. The petitioner entered into Government Service as Nurse only on 09.03.1981. Even when the petitioner was permitted to undergo M.Sc. Course, it was made clear that she is not entitled to claim any benefit out of such Post Graduate qualification. The petitioner was asked in the year 1996, by appointing her as Nurse, to assist the classes on deputation in addition to the nurse work. The learned Spl.GP (Edn) has also taken me to the Government Order in G.O.(D) No.1281, Health and Family Welfare Department, dated 23.09.1996 in which the petitioner along with others have been directed temporarily by way of deputation to the College of Nursing stating that the petitioner and others should not make any claim on the said temporary arrangement. He would also state that by G.O.Ms.No.192, Health and Family Welfare Department, dated 16.06.2000, the Adhoc Rules relating to method of appointment and qualification were amended and there was a subsequent amendment by G.O.Ms.No.89, Health and Family Welfare Department, dated 21.05.2002. He would also state that it was only by G.O.(D) No.926, Health and Family Welfare Department, dated 03.09.2004, the petitioner was appointed by recruitment by transfer as a Lecturer in Nursing in the speciality of Medical and Surgical. On the other hand, according to the learned Special Govt. Pleader (Education), the third respondent was appointed as Lecturer in Nursing on 09.01.2001 by G.O.(D) No.54, Health and Family Welfare Department, dated 09.01.2001 and the said order remains unchallenged and from the said date onwards she has been working as Lecturer and that was the panel for the year 2000-01. It is also his contention that, at that time, the case of the petitioner was also considered but the same was rejected and it was on 31.07.2006, the third respondent was appointed as Reader and that appointment was based on G.O.Ms.No.302, Health and Family Welfare Department, dated 26.02.1980 which stipulates M.Sc. Degree in Nursing with five years experience in the field of Nursing, out of which three years should be of teaching University Nursing students with administrative experience in Nursing as a Nursing Tutor or Nursing Superintendent. According to the learned Spl. Govt. Pleader, the order of interim stay granted by this Court on 26.07.2006 was communicated by the petitioner only on 31.07.2006 and was received on 02.08.2006, while on 31.07.2006, the third respondent has taken charge. Therefore, there is no malafide in the appointment of the third respondent or by transfer of the petitioner to Madurai.

10. According to the learned counsel for the third respondent in W.P.No.23560 of 2006, the third respondent was due to retire by the year 2007 and she was made as a Lecturer in January 2001 and she had more than three years of experience and accordingly she was promoted as a Reader and has taken charge on 31.07.2006 itself and therefore she should not be disturbed.

11. Learned counsel appearing for the fourth respondent has submitted that as far as the fourth respondent is concerned, she was appointed as Nurse on 31.10.1974 and promoted as Nursing Tutor on

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25.08.1999 and made as Lecturer in Nursing on 11.01.2001 and she has obtained B.Sc. Nursing in the year 1983 and M.Sc. Nursing in the year March 1998, with 32 years of service, out of which 21½ years as teaching experience.

12. I have heard the learned Senior Counsel appearing for the petitioner, learned Special Govt. Pleader (Education) appearing for the 1st and 2nd respondents in W.P.Nos.23560 of 2006 and 28662 of 2006 and also the respondents 3, 4 and 5 in W.P.No.23560 of 2006 and perused the entire records.

13. It is seen that originally the Indian Nursing Council has prescribed the following qualifications for the post of Reader in Nursing and Lecturer in Nursing:-

Reader in Nursing - Master Degree in a specialised field with five years experience in a collegiate programme.

Lecturer in Nursing - Master Degree in a specialised field with three years teaching experience.

The State Government has framed Adhoc Rules for the post of Tutors in Nursing by G.O.Ms.No.1451, Health and Family Welfare Department, dated 05.08.1969, and that was the statutory rule framed under Article 309 of the Constitution of India. It was in that, the qualification for the post of Tutor was stated as:-

1. B.Sc. Degree in Nursing or its equivalent recognised by the Indian Nursing Council with a total experience of 3 years in Nursing and
2. Must have registered as a Nurse and Midwife in case of women candidate and as Nurse in case of men candidates under Madras Nurses and Mid Wives Council.

Thereafter, the said Adhoc Rules have been amended many times including G.O.Ms.No.171, Health and Family Welfare Department, dated 25.02.1994 under which the term "Tutor in Nursing" was made as "Lecturer in Nursing". In the said statutory amendment, the method and qualifications were stated as follows:-

"Method of Appointment (1)	Qualifications (2)
(i) By transfer from the category of Nursing Tutor Grade I or Nursing Superintendent, Grade I.	Masters degree in Nursing in the speciality concerned or its equivalent, recognised by the Indian Nursing Council and experience for a period of not less than three years in Nursing.
(ii) By promotion from the category of Nursing Tutor, Grade II or Nursing Superintendent,	(a) A Masters degree in Nursing in the speciality concerned or its equivalent, recognised by the Indian Nursing Council and

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Grade-II.		Experience for a period of not less than three years in Nursing; or
		(b) A Bachelors degree in Nursing in the speciality concerned and teaching experience as Nursing Tutor Grade II for a period of not less than ten years :

Provided that a Masters degree in Nursing in the speciality concerned shall be acquired by the individual within a period of five years form the date of appointment to the post, failing which he/she shall be reverted.

iii)By direct recruitment		A Masters degree in Nursing in the speciality concerned or its equivalent, recognised by the Indian Nursing Council and experience for a period of not less than three years in Nursing.
		(ii) No person shall be eligible for appointment to the post, unless registered as a Nurse and as a Midwife in the case of a female candidate and as a Nurse in the case of a male candidate in the Tamil Nadu Nurses and Midwives Council."

14. It is seen that the said amendment was made in accordance with the regulations of the Indian Nursing Council. By G.O.Ms.No.192, Health and Family Welfare Department, dated 16.06.2000, a further amendment was made to the Adhoc Rules by the State Government, indicating the various modes of appointment to the post of Lecturer in Nursing for which one such mode of appointment is stated as "By recruitment by transfer from the category of Public Health Nurse in the Tamil Nadu Public Health Service or from the posts of Nurses category in the Tamil Nadu Medical Subordinate Service". It was pursuant to the said amended Adhoc Rules, by G.O.(D) No.54, Health and Family Welfare Department, dated 09.01.2001, the State Government has appointed the third respondent in W.P.No.23560 of 2006, Mrs.S.Manoranjitham, as Lecturer in Nursing, based on the list of the year 2000-01. It is the specific case of the first and second respondents in the said writ petition that at the time when the third respondent was made as Lecturer in Nursing, with effect from 09.01.2001, the same was based on

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G.O.Ms.No.192, Health and Family Welfare Department, dated 16.06.2000, which enables promotion from Nursing Superintendent Category-2, etc. It is seen that, at that time, the petitioner was holding the post of Nurse and she was also considered in 2000-01 list, but in respect of Surgical Category, the third and fourth respondents were appointed as Lecturers on 09.01.2001, which fact cannot be denied by the petitioner.

15. The case of the petitioner is that, when the petitioner has been deputed for the purpose of assigning the teaching work for Clinicals and Community Health of the students from the year 1996, as per G.O.(D) No.1281, Health and Family Welfare Department, dated 23.09.1996, she should be taken to the teaching category as a Lecturer by considering the said experience acquired from the year 1996. It remains an unassailable fact that the order of the first respondent dated 09.01.2001 in G.O.(D) No.54, Health and Family Welfare Department, dated 09.01.2001, appointing the third and fourth respondents as Lecturer in Nursing, has not been questioned by the petitioner at any point of time and the same has become final. Therefore, the factual position that atleast from 09.01.2001, the third and fourth respondents in W.P.No.23560 of 2006 have been working as Lecturers in Nursing, cannot be questioned by the petitioner now. But, on the other hand, it also remains a fact that it was only by G.O.(D) No.927, Health and Family Welfare (AA2) Department, dated 03.09.2004, the petitioner was appointed as a Lecturer in the speciality of Medical and Surgical and under such circumstances, I do not see any reason for the petitioner to seek any seniority or preference over the third and fourth respondents. It may be stated to be a clear case of estoppel against the petitioner in the presence of G.O.(D)No.54, Health and Family Welfare Department, dated 09.01.2001, which has become final especially when it is the case of the first and second respondents that the petitioner was also considered at that time. Therefore, there is absolutely no difficulty to come to the conclusion that the petitioner can never claim preference over the third and fourth respondents as Lecturer in Nursing. The contention of the learned Senior Counsel for the petitioner that the amendments introduced by the Indian Nursing Council ought to have been carried out in the Adhoc Rules also can only be applicable to the qualifications and not to the mode of recruitment. The mode of recruitment, as made by the State Government, in G.O.Ms.No.192, Health and Family Welfare Department, dated 16.06.2000, cannot be said to be against the Regulations of the Indian Nursing Council, especially when there is no dispute regarding the qualifications of the third and fourth respondents, as prescribed by the Indian Nursing Council itself.

16. Now, coming to the post of Reader, it is true that the Indian Nursing Council has issued the Regulations on 06.12.2005 by way of an amendment in which the qualifications for appointment as Reader / Associate Professor, is stated as follows:

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"Reader / Associate Professor - Master Degree in Nursing

- 10 years experience after M.Sc. Nursing in a College of Nursing. (If a candidate is not available, 5 years of experience in College of Nursing with an aggregates of 10 years teaching experience.

Desirable: Independent published work of high standard / doctorate degree / M.Phil."

Corresponding Adhoc Rules for the post of Readers were given in G.O.Ms.No.302, Health and Family Welfare Department, dated 26.02.1980, wherein for the post of Reader in Nursing, the following qualifications have been given:

"Reader in Nursing (Medical and Surgical)

(i) M.Sc. Degree in Nursing with specialisation in Medical Surgical.

(ii) Five years experience in the field of Nursing out of which three years should be of teaching University Nursing students, with administrative experience in Nursing as a Nursing Tutor or Nursing Superintendent. If such a candidate is not available, candidate with experience for a period of not less than three years in teaching University Nursing students with administrative experience in Nursing as Nursing Tutor or Nursing Superintendent or Head Nurse shall be considered.

(iii) Must have registered as a Nurse / Midwife under the Madras Nurses and Midwives Council."

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Eventhough a comparison between the Regulation of the Indian Nursing Council dated 06.12.2005 and the said Adhoc Rules regarding the post of Reader shows that there is a difference, and it is true that the first respondent has not carried out the consequential amendment in the Adhoc Rules in consonance with the December 2005 Regulation of the Indian Nursing Council and struck to the amended Adhoc Rules dated 26.02.1980, which prescribes five years experience in the field of Nursing out of which three years as teaching in the College with administrative

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experience as Nursing Tutor or Nursing Superintendent, the Nursing Council of India Regulation as amended on 06.12.2005 itself provides for appointment of Reader with five years experience in the College of Nursing with an aggregate of ten years teaching experience if the candidate with ten years experience after M.Sc. is not available. Applying the said yardstick, the third respondent was appointed on 09.01.2001 as Lecturer in Nursing and she was certainly having five years of experience in a College of Nursing on 31.07.2006 when she was promoted and appointed as a Reader in Nursing, eventhough she was a Nursing Superintendent from the year 1991 onwards. On the other hand, as far as the petitioner is concerned, even as per the admitted fact, her appointment as Lecturer on regular basis was only on 03.09.2004 as per G.O.(D)No.927, Health and Family Welfare (AA2) Department, dated 03.09.2004, inspite of the fact that she has been deputed to assist the students in class room teaching Clinicals and Community Health, from 23.09.1996 in G.O.(D) No.1281, Health and Family Welfare Department, dated 23.09.1996, and that is also subject to a specific condition that on such deputation, if the seniors to the petitioner are promoted, the petitioner should not make any claim. The said condition reads as follows:

"3. The Government further direct that the above deputed Nursing Tutors and Nurses will not claim any right over others, who are senior to them, when they are promoted. They have no rights to claim any advantages/preference in view of the above temporary arrangement."

On the other hand, if the fourth respondent is taken into consideration, she was appointed as a Nurse on 31.10.1974, promoted as Nursing Tutor on 25.08.1999 and made as Lecturer in January 2001. Therefore, taking into consideration the comparative analysis of the case of the petitioner and the third and fourth respondents in W.P.No.23560 of 2006, I have absolutely no hesitation to come to the conclusion that the petitioner has no manner of right to question the appointment of the third respondent since she is nowhere near the third respondent in experience. Merely because the petitioner has the Ph.D which is no doubt desirable as per the Indian Nursing Council Regulation of December 2005, that itself cannot confer any priority especially in the circumstance when the third respondent is having the required qualifications and more experience than the petitioner on the teaching side. Under these circumstances, I do not think that it is necessary for me in this case to go into the legality or otherwise of the Adhoc Rules framed by the State Government and as to whether it is in consonance with the Indian Nursing Council Regulation, or not. A harmonious reading of the Indian Nursing Council Regulation along with the State Adhoc Rules show that the third respondent's promotion as Reader cannot be assailed on the ground of the failure of the State Government in amending the Adhoc Rules in accordance with the Regulation of the Indian Nursing Council.

17. In view of the above said factual position, I do not think that the impugned order in W.P.No.28662 of 2006 which states that the transfer is effected purely on administrative grounds, can be held to suffer from any illegality, or malafide in nature. As to whether the Nursing Course

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at Madurai Medical College is having only Under Graduate Course, while the Madras Medical College in the Nursing side is having both Post Graduate as well as Under Graduate courses and therefore more number of Lecturers on the Surgical side is not required in Madurai Medical College, is for the administration to decide and not for this Court to decide the issue under Article 226 of the Constitution of India. When once it is not even the case of the petitioner that the post held by her is not transferable, the transfer should be treated as incidents of service and it does not warrant any interference of this Court. In view of the same, the W.P.Nos.23560 of 2006 and 23992 of 2006 fail and the same are dismissed. No costs. Consequently, M.P.No.1 of 2006 in W.P.No.23560 of 2006 and M.P.No.1 of 2006 in W.P.No.28662 of 2006 are closed.

km

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Secretary to Government,
   Government of Tamil Nadu,
   Health & Family Welfare Department,
   Fort St.George,
   Chennai-600 009.

2. The Director of Medical Education,
   Chepauk, Chennai-600 005.

3. The President,
   Indian Nursing Council,
   Combined Council Building,
   Kotla Road, Temple Lane, New Delhi-110 002.

4. The Dean,
   Madras Medical College, Chennai-3.

+2ccs to Mr.A.Jenasenan, Advocate Sr.Nos.7250 & 7249.

+2 ccs to The Government Pleader,
High Court, Madras Sr.Nos.7424 & 7423.

+1 cc to Mr.A.V.Bharathi, Advocate Sr.No.7344.
PPV(CO)
dcp/13.2.07

W.P.Nos.23560 and
28662 of 2006

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